

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the number of Special Risk Class members who may upgrade previous service to Special Risk Class service.

Safeguard individual liberty – The bill limits membership for forensic employees by creating additional criteria that must be met for membership in the Special Risk Class. Membership is revoked for any current member of the Special Risk Class who does not meet the narrower criteria.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

FLORIDA RETIREMENT SYSTEM

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 164 cities and 209 independent special districts that have elected to join the system.²

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over 680,000 active members,³ 264,000 retirees and surviving beneficiaries,⁴ and 31,000 Deferred Retirement Option Program participants.⁵ Members of the FRS belong to one of five membership classes:

| | | |
|---|-----------------|-----------------------------------|
| 1. Regular Class ⁶ | 588,204 members | 86.46% of membership |
| 2. Special Risk Class ⁷ | 74,224 members | 10.91% of membership |
| 3. Special Risk Administrative Support Class ⁸ | 74 members | 0.01% of membership |
| 4. Elected Officers' Class ⁹ | 2,078 members | 0.31% of membership |
| 5. Senior Management Service Class ¹⁰ | 7,562 members | 1.11% of membership ¹¹ |

Each class is funded separately through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, F.S.¹²

¹ Section 121.025, F.S.

² Department of Management Services, Division of Retirement: Florida Retirement System Annual Report, July 1, 2006 – June 30, 2007 (on file with the Committee on State Affairs) at 91 [hereafter referred to as FRS Annual Report].

³ *Id.* at 43.

⁴ *Id.* at 52.

⁵ *Id.* at 49.

⁶ Section 121.021(12), F.S.

⁷ Section 121.0515, F.S.

⁸ Section 121.0515(7), F.S.

⁹ Section 121.052, F.S.

¹⁰ Section 121.055, F.S.

¹¹ FRS Annual Report at 43.

¹² *See, e.g.,* s. 121.055(3)(a)1., F.S.

SPECIAL RISK CLASS

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹³ might need to retire at an earlier age with less service than other types of employees. As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.¹⁴ Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.¹⁵ These increased benefits are funded through higher employer contribution rates: 19.76 percent of gross compensation, effective July 1, 2007, and 22.01 percent, effective July 1, 2008.¹⁶

Special Risk Class membership includes law enforcement officers, correctional officers, and firefighters;¹⁷ emergency medical technicians and paramedics;¹⁸ community-based correctional probation officers;¹⁹ certain employees of correctional or forensic facilities or institutions;²⁰ youth custody officers;²¹ and employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline.²²

SPECIAL RISK CLASS – UPGRADED SERVICE

Another legislative trend has followed the expansion of the Special Risk Class: allowing members who have previous service in another class of the FRS, usually the Regular Class, to purchase additional retirement credit to upgrade that previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for such upgraded service.²³ In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.²⁴

PROPOSED CHANGES

This bill revises eligibility for membership in the Special Risk Class for forensic employees. It narrows membership to only those employees in specific forensic positions and meeting specified criteria.

Members employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory, must occupy a position in one of the following classes:

¹³ Section 125.0515(1), F.S. (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹⁴ Section 121.021(29), F.S., defines normal retirement date, which contrasts with members of the Regular Class who can retire at age 62 or with 30 years of creditable service.

¹⁵ Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for Regular Class members).

¹⁶ Section 121.71(3), F.S. (compared with 8.69 percent, effective July 1, 2007, and 9.59 percent, effective July 1, 2008, for Regular Class members).

¹⁷ Ch. 78-308, L.O.F.; codified as s. 121.0515, F.S.

¹⁸ Ch. 99-392, L.O.F., s. 23.

¹⁹ Ch. 2000-169, L.O.F., s. 29.

²⁰ *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietician, public health nutrition consultant, psychological specialist, psychologist, senior psychologist, regional mental health consultant, psychological services director-DRC, pharmacist, certain senior pharmacists, dentist, senior dentist, registered nurse, senior registered nurse, registered nurse specialist, clinical associate, advanced registered nurse practitioner, advanced registered nurse practitioner specialist, registered nurse supervisor, senior registered nurse supervisor, registered nursing consultant, quality management program supervisor, executive nursing director, speech and hearing therapist, and pharmacy manager).

²¹ Ch. 2001-125, L.O.F., s. 43.

²² Ch. 2005-167, L.O.F., s. 1; codified as s. 121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification).

²³ Ch. 2001-235, L.O.F., s. 6.

²⁴ Ch. 2002-273, L.O.F., s. 16.

- Forensic technologist;
- Crime laboratory technician;
- Crime laboratory analyst;
- Senior crime laboratory analyst;
- Crime laboratory analyst supervisor;
- Forensic chief; or
- Forensic services quality manager.

Members employed by local government law enforcement agencies or a medical examiner's office must spend at least 65 percent of their time performing duties involving the:

- Collection, examination, preservation, documentation, preparation, or analysis of human tissues or fluids or physical evidence having potential biological, chemical, or radiological hazard or contamination;
- Use of chemicals, processes, or materials that may have carcinogenic or health damaging properties in the analysis of such evidence; or
- Direct supervision of one or more individuals having such responsibilities.

The bill revokes the Special Risk Class designation of forensic employees who joined the Special Risk Class based on current statutory criteria and who do not meet the narrower eligibility requirements prescribed by the bill. Such members are placed in the Regular Class.

The bill permits members eligible for the Special Risk Class, under the new criteria, who earned creditable service in another membership class of the FRS while performing similar work to upgrade such service to Special Risk Class service. The cost to upgrade retirement credit to Special Risk Class service is calculated using a formula and methodology certified by an enrolled actuary. It must be paid immediately upon notification by the Division of Retirement. The employer is permitted, but not required, to purchase the service credit on behalf of the member if the member has been employed by that employer for at least three years.

The bill provides legislative findings and declares that it fulfills an important state interest.

C. SECTION DIRECTORY:

Section 1 amends s. 121.0515, F.S., to revise eligibility for membership in the Special Risk Class; and to permit medical examiners and certain forensic employees to purchase upgraded service in the Special Risk Class.

Section 2 provides legislative findings and declares that the bill fulfills an important state interest.

Section 4 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

Article X, s. 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.²⁵ The bill appears to satisfy this constitutional requirement because it requires past service credit cost to be calculated in an actuarially sound manner. In addition, the employees or employers choosing to purchase such credit will pay for the cost.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Management Services:

This bill could create a precedent for more employee groups covered by the Special Risk Class to seek the ability to upgrade previous service. This change would make the benefits of the Special Risk Class even more attractive and could lead to more employee groups seeking to be covered by the Special Risk Class. Each successive group granted the ability to have retroactive service credit upgrades creates additional system cost that will surface in future valuations and experience studies, regardless of the size of the group.

Special Risk Class membership for a member employed in an eligible forensic position with a specified employer is determined individually and is not related only to the holding of a forensic position because the certification requirement is

²⁵ Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees that is funded in whole or in part by public funds.

not a requirement for employment in these positions. This requirement is unique compared to the emergency medical technicians, paramedics, firefighter training positions, and fire prevention positions that are the only other positions that have been granted the ability to upgrade prior service in those positions to the Special Risk Class value. The individual eligibility requirements and the status of the employer as a law enforcement agency or medical examiner's office for Special Risk Class participation by members employed in forensic positions could pose additional challenges for determination of eligible service for upgrade.²⁶

D. STATEMENT OF THE SPONSOR

No sponsor statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 22, 2008, the Government Efficiency & Accountability Council adopted a strike-all amendment and reported the bill favorably as a Council Substitute.

The amendment revises eligibility for membership in the Special Risk Class for forensic employees. It narrows membership to only those employees in specific forensic positions and meeting specified criteria. Members employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory, must occupy a position in one of the following classes:

- Forensic technologist;
- Crime laboratory technician;
- Crime laboratory analyst;
- Senior crime laboratory analyst;
- Crime laboratory analyst supervisor;
- Forensic chief; or
- Forensic services quality manager.

Members employed by local government law enforcement agencies or a medical examiner's office must spend at least 65 percent of their time performing certain duties with potential risk of contamination or use chemicals, processes, or materials that may have carcinogenic or health damaging properties.

The amendment revokes the Special Risk Class designation of forensic employees who joined the Special Risk Class based on current statutory criteria and who do not meet the narrower eligibility requirements prescribed by the amendment. Such members are placed in the Regular Class.

The amendment authorizes members who, based on the narrower criteria, attain or retain membership in the Special Risk Class to purchase additional retirement credit to upgrade such service to Special Risk Class service. The cost of such credit is calculated using a formula and methodology certified by an enrolled actuary, and must be paid immediately upon notification by the Division. The employer is permitted, but not required, to purchase the service credit on behalf of the member, but only if the member has been employed by that employer for at least three years.

²⁶ Department of Management Services HB 531 (2008) Substantive Bill Analysis (Jan. 30, 2008; Rev. Apr. 4, 2008) at 12-13 (on file with the Government Efficiency & Accountability Council).